

Citation: *K. F. v. Minister of Human Resources and Skills Development*, 2014 SSTGDIS 43

Appeal No: GT-117406

BETWEEN:

K. F.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

SOCIAL SECURITY TRIBUNAL MEMBER: Raymond Raphael

HEARING DATE: December 22, 2014

TYPE OF HEARING: Teleconference

DATE OF DECISION: December 23, 2014

PERSONS IN ATTENDANCE

K. F.: Appellant

Raj Napal: Appellant's representative

B. F.: Appellant's daughter

Barry Barnes: Observer, Member of the Social Security Tribunal

DECISION

[1] The Tribunal finds that a *Canada Pension Plan* (CPP) disability pension is payable to the Appellant.

INTRODUCTION

[2] The Appellant's application for a CPP disability pension was date stamped by the Respondent March 15, 2011. The Respondent denied the application at the initial and reconsideration levels and the Appellant appealed to the Office of the Commissioner of Review Tribunals (OCRT).

[3] The hearing of this appeal was by teleconference for the reasons given in the Notice of Hearing dated September 11, 2014.

THE LAW

[4] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Social Security Tribunal.

[5] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

- a) Be under 65 years of age;
- b) Not be in receipt of the CPP retirement pension;

- c) Be disabled; and
- d) Have made valid contributions to the CPP for not less than the Minimum Qualifying Period (MQP).

[6] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[7] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

ISSUE

[8] The Tribunal finds that the MQP date is December 31, 2008.

[9] In this case, the Tribunal must decide if it is more likely than not that the Appellant had a severe and prolonged disability on or before the date of the MQP.

PERSONAL BACKGROUND

[10] The Appellant was 43 years old on the December 31, 2008 MQP date; she is now 49 years old. She is married and has three adult children. The Appellant was involved in a motor vehicle accident (MVA) on March 5, 2008. At the time of the MVA, she was working as a self-employed residential cleaner. Prior to working as a residential cleaner, the Appellant had worked for many years in an office environment performing customer service, reception, and expediting duties.

[11] She attempted to continue working as a house cleaner after the MVA, but this became increasingly difficult because of her progressive worsening back and lower extremity pain. She subsequently attempted to continue working with her husband in a country market from March 2009 until December 2009; part-time at Pizza Delight and then Pete's Donuts & Deli from May

2010 until March 2011; and lastly, as a school crossing guard from February 2013 until February 2014.

[12] She hasn't been able to work at all since February 2014 primarily because of her chronic severe back and lower extremity pain.

Application Materials

[13] In her CPP disability questionnaire, date stamped by the Respondent on March 15, 2011, the Appellant indicated that she has a grade 11 education. She noted that she was working for four hours per day (2-3 days per week) doing food service for Pete's Donuts and Deli. She also noted that her physical pain was too painful for her to continue working. She noted her other work in the last five years to have included house cleaning and restaurant work. She also noted that she has had to shorten her hours and not do anything that involves lifting, twisting, turning, or bending, and that it was becoming harder for her to be on her feet for four hours.

[14] The Appellant did not indicate a date as of which she was claiming to be disabled, and listed her main illnesses and impairments to be sacroiliac joint injury, severe lower back pain, and sciatica pain. She indicated that she wears a back brace, and that she takes 3-4 Percocets and 3-4 Ibuprofen, to get through a four hour shift.

[15] A report dated March 23, 2011 from Dr. Corbett, the Appellant's family doctor, accompanied the CPP application. The report diagnoses fibromyalgia, chronic bilateral sacroiliac strain, and facet joint arthritis. The report notes that the Appellant was involved in a motor vehicle accident (MVA) in 2008, and that as a result she has suffered progressive incapacitating pain and weakness. Dr. Corbett indicated that, despite treatment, the Appellant's condition had worsened over the past two years. Dr. Corbett further indicated that the Appellant was very motivated to work, and that financial difficulty was limiting treatment modalities.

ORAL EVIDENCE

Appellant's Evidence

[16] The Appellant testified that she attempted to continue cleaning for approximately ten months after the MVA, but she couldn't continue any longer because of her pain. She also testified that because of the recession, her husband's business "went down the tube." In March 2009, she and her husband opened Mono Country Market in X. She testified that she didn't do any of the strenuous work, and her work only involved lighter duties. She stated that she was able to sit down whenever she needed to, and that she would often go and lie down for a couple of hours, and then return to work. She was able to do this because they were living at the same location as the restaurant. They didn't serve dinner, so they would close between two and three in the afternoon. When referred by the Tribunal to the description of her work in the worksite assessment prepared on August 20, 2009 and in Dr. Kadish's March 17, 2010 report, she stated that these reports probably overstated her hours since they closed between two and three, and she didn't work continuously.

[17] In December 2009 they closed the restaurant because they weren't making enough money, and she wasn't able to continue working because of her condition. She stated that the primary reason for closing was her disability, because a family member offered a loan to keep the business running. She stated that they declined the loan because she wasn't able to continue.

[18] In May 2010 she started working part-time at Pizza Delight. She used to work there when she was younger, and when she ran into her old boss, she offered her part-time employment with lighter duties. She only did serving, and no mopping or garbage. In August 2010, she started to work for Pete's Donut's and Deli (Pete's) because the Pizza Delight was going out of business. At Pete's she just worked behind the counter serving coffee, wiping counters down, and making sandwiches. At first she was working 30 hours per week, but her pain was increasing and she was starting to take a lot of medications. In December she spoke to her boss, and she reduced her shifts to three hours; she had difficulty working 18 hours per week. By February 2011 her pain was so bad that she couldn't continue working even on the reduced shifts – she gave notice that she would stop working in March.

[19] She didn't return to work until February 2013, when she started to work as a school crossing guard. She thought she might be able to do this, since she only had to work for one hour at a time. She was working three one hour shifts a day, but found that on many days her pain was debilitating. The pain would come on at night, and she was finding it increasingly more difficult to continue working. She was finding it harder and harder to get up in the morning, and she found that the standing was very painful. She was worried about the danger to the children if her back collapsed while she was working.

[20] She stopped working as a school guard in February 2014 because of her increasing pain, and she hasn't been able to work at all since then. When asked why, she stated that she is always in too much pain. When describing the pain she stated, "It is debilitating...it goes from my low back into my hips and buttocks...I have constant severe sciatica pain...the pain in my lower back is constant and intense.... I have difficulty going up and down stairs...sometimes I have to crawl down the stairs."

[21] The Appellant described her medication history. As of December 2008, and while she was working in the country market, she was taken Tylenol #2's and 600 mg of ibuprofen on a daily basis. When she was working at Pete's her doctor prescribed Percocet, which was then changed to two Oxycocet (120 mg) tablets a day. In 2012 she was referred to a pain clinic, where she was prescribed two different kinds of morphine, gabapentin, and amitriptyline. She has been getting epidural injections at the pain clinic which provide temporary relief for four to six weeks. Her present medications include morphine, gabapentin, and amitriptyline. She sees a chiropractor biweekly for active release therapy.

[22] She copes at home by getting help from her daughter and husband, and by only doing small amounts of light housework at a time. On a typical day, she is up during the night because of her pain. When she gets up she takes her medications, and then goes downstairs. She stated that she has to use the handrail and go sideways down the stairs. It takes about 1 ½ hours before she is mobile. She then takes a shower and dresses herself. She goes for a ten minute walk every day; she doesn't go longer because she is afraid that she won't be able to get home. She does the stretches that her chiropractor showed her, and tries to do some light housework such as cooking or laundry, but has to pace herself. Her husband and daughter do all of the heavy work, and help her with lighter housework. She is able to drive, but on a bad day driving becomes very painful

after ½ hour. Even on good days, she finds driving very painful after one hour and she has to get out of the car to stretch. She can only sit at a computer for 15-20 minutes before she has to get up. She does little socializing, because she is reluctant to go anywhere since she knows that she will want to leave because of her pain.

[23] She can't envision any type of work that she could do because of her constant pain; her limited ability to sit, stand, or walk; and her sleep disturbance because the pain wakes her up every two to three hours. She stated that she is depressed, and that she tried anti-depressants but they made her suicidal. She also saw a counsellor.

B. F.'s Evidence

[24] She is 26 years old, and lives at home with her parents. When asked to describe her observations of her mother's disability, she stated that her mother struggles a lot, and the hardest thing is to watch her get up in the morning. She stated that the disability has affected her mother mentally, physically, and emotionally. Her mother does a little housework at a time, but doesn't do any vacuuming, mopping, or dishes. She sits for 15 minutes, and then has to get up and walk around. She is constantly tense, and sits on the edge of the couch because she can't lean back. The television is on all day, because her mother isn't able to do anything else.

[25] She stated that her mother has continued to get progressively worse since December 2008. She lived with her parents for a short time, while they operated the country market. Her mother did serving and cooking frozen entries; her father and other employees did most of the other work. Her mother worked from 8 in the morning to 2:30 in the afternoon. By the afternoon, she would have to go to her room and rest; she was in a lot of pain at night. Her parents closed the restaurant because it wasn't making any money, and because the work was so hard on her mother. She continually told her parents that the restaurant didn't make any sense because of her mother's condition.

[26] She can't see any other type of work that her mother could do. She is always in pain, and couldn't do an office job because she can't sit. If she worked for three hours on one day, she wouldn't be able to work the next day because she would be in so much pain. She believes that her mother's condition has become worse since they closed the market.

MEDICAL EVIDENCE

[27] The Tribunal has carefully reviewed all of the medical evidence in the hearing file. Set out below are those excerpts the Tribunal considers most pertinent.

Dr. MacMillan's clinical notes

[28] The clinical notes of Dr. MacMillan, family doctor, from October 15, 2008 to July 27, 2011 are included in the hearing file.

[29] The notes for October 15, 2008 indicate that the Appellant still has back pain at the right iliac crest, sometimes shifting also to the left side. On some days the Appellant has no pain, and on other days she has pain across her back, and into her right hip and shin.. The Appellant was referred to Dr. Koo for a full back examination, and started on Tylenol #2.

[30] The note dated November 5, 2008 indicates that the Appellant had booked herself into physiotherapy. The note also indicates that sometimes the Appellant feels that her spine is going to snap in half. The Appellant indicated that she was having headaches; that after working all day she can hardly carry on; that she is very stressed; that she experiences pain in the right buttock, right thigh, and right lower leg; and that her toes might be numb.

[31] The note dated February 12, 2009 reports the Appellant stating, "I'm suffering...it's in my knees, pain comes down bac [sic] and front of leg r side > and reaches knees. It is worst in the R buttock, where there is a feeling of something being ripped, but it throbs in back and throbs in the leg down to the tips of toes. Was cleaning and had to leave home. Was coming home sobbing."

[32] The note dated June 15, 2009 indicates that the Appellant is running a country market and doing some cooking, all day breakfast, wraps and salads, and preserves. The note further indicates that the Appellant suffers throbbing and pulsing in both knees; that the pain radiates down both thighs and buttocks, and may go to the bottom of her feet; that she is attending physiotherapy twice a week; and that she wants to know what to do about her emotions. The note also indicates that the Appellant needs an antidepressant, that she is continuing on ibuprofen, and that she was prescribed Neurontin, for nerve pain.

[33] The note dated July 27, 2009 indicates that Motrin was helping but causing tiredness; and that the Appellant will persevere for now. The note also indicates that the Appellant went away for three days, and on returning to work she was walking on hard floors and after 45 minutes she had all of her old symptoms.

[34] The note dated October 7, 2009 indicates that the Appellant's chronic pain level was high.

[35] The note dated January 27, 2010 indicates that they had closed down the market; that she can't do it; that she can neither stand or sit in the same position for long, and needs to be part time; that she is going crazy from doing nothing; and that she has pain in her lower back, buttocks, and legs.

[36] The note dated May 4, 2010 indicates that the Appellant had just started back at part time work in a restaurant. The Appellant reported that her right leg was very weak; that she experienced shooting pains in her right groin; that on some days she has difficulty lifting her right leg, and has problems getting dressed.

[37] The noted dated May 4, 2010 indicates that the Appellant was started on Percocet.

[38] The note dated August 19, 2010 indicates that the Appellant was complaining about emotional lability; that she had the same problem last year and was given medications; that she is unable to stop crying; and that she is willing to try counselling. The Appellant was started on Wellbutrin.

[39] The note dated October 4, 2010 indicates that the Appellant was given more medications; that she was now wearing a back brace and feeling 30-40% better at work; and that she was planning to reduce her hours the next month. The Appellant's Percocet and Motrin were renewed.

[40] The note dated November 19, 2010 indicates that the Appellant was discontinuing Wellbutrin, and starting Lyrica. Her Percocet was renewed.

[41] The note dated January 17, 2011 indicates that the Appellant needs more medications, and that they were increasing her dosage of Lyrica. The Appellant had been dropping objects from her right hand for the past 1 ½ years, and was cutting her working hours down to 16 hours a week.

[42] The last note in the hearing file dated July 7, 2011 indicated that the Appellant's Oxycontin was renewed.

Reports

[43] A worksite assessment prepared on August 20, 2009 indicates that prior to the March 5, 2008 MVA the Appellant was a self-employed cleaner, working full-time for 35 hours per week, cleaning residential homes. The Appellant reported that post-accident she was unable to resume the physical demands of her pre-accident job, and that she closed the business on January 17, 2009. The Appellant further reported that since March 2009, she and her husband, together with another business partner, have been the owners/operators of Mono Country Market, which is a restaurant that also sells baked goods, frozen entrees, preserves, and ice cream. The Appellant's husband does most of the cooking, and she is responsible for light tasks such as greeting and serving customers (at the cash desk), preparing soups, entrees (for the frozen entree section), gathering and washing cooking utensils/dishes, reconcile/balance the cash till at the end of the day, doing light tasks such as wiping/tidying the counter top and pop cooler, putting away light stock items, and shopping for light items at the supermarket.

[44] The report indicates that the Appellant and her husband are living in two rooms attached to the market, and that they are currently working seven days a week, for 10-12 hours a day. The Appellant reported that she has constant low back pain and pain radiating into her right knee, and numbness at the back of her calf. Although this limited her physical activity, she is able to carry out the light physical tasks at the country market.

[45] On March 17, 2010 Dr. Kadish, orthopaedic surgeon, reported on his assessment of the Appellant. The report notes that the Appellant commenced physiotherapy on November 2008, and that she attended twice a week until January 2010. The report also notes that she suffered progressive worsening of her accident related symptoms, and that approximately six or seven

months ago she notice radiation of her back pain into the left side of her low back. The report notes that the restaurant closed in December 2009, and that the Appellant has not worked since that time. The report also notes that in the restaurant, the Appellant did the cooking, serving, and dishes, but was not involved in heavy physical activities such as mopping because of her back and lower extremity pain. The Appellant was currently looking for part-time work that does not involve physically demanding activities such as bending, heavy lifting, or a long period of time on a concrete floor. Dr. Kadish opined that in view of the progressive worsening of the Appellant's symptoms, and her failure to respond to treatment, the prognosis is likely poor.

[46] On November 19, 2010 Dr. Corbett referred the Appellant to Dr. Yuen for progressive pain in her lower back, buttocks, groin, knees and elbows. Dr. Corbett noted that the Appellant's pain had started subsequent to her March 2008 MVA, and that it had not responded to any treatment modalities. Dr. Corbett wondered whether the Appellant had fibromyalgia.

[47] On January 12, 2011 Dr. Ahn, orthopaedic surgeon, reported that the Appellant's symptoms were not amenable to surgery.

[48] On June 22, 2011 Dr. Yuen, rheumatologist, diagnosed fibromyalgia. He reported that the Appellant developed low back pain following her MVA, and that subsequently her pain became more widespread. The examination revealed multiple fibromyalgia tender points and that the Appellant also suffered from sleep disturbances, fatigue, and unrefreshed sleep.

[49] A report from Dr. Pollett, chronic pain specialist, dated January 5, 2012 reports that after the restaurant was closed in December 2009, the Appellant tried working in a doughnut shop; that she had to take time off because of her persistent pain, and that in April 2011 she was forced to stop working because of her pain. The Appellant's current medical problems included overactive bladder, osteoporosis, fibromyalgia, and depression. Dr. Pollett concurred with the diagnosis of fibromyalgia, and also diagnosed chronic myofascial lumbar pain with bilateral chronic neuropathic pain in the distribution of L4 and L5.

[50] On October 20, 2014 Dr. Alpert, orthopaedic surgeon, reported on his assessment of the Appellant. Dr. Alpert diagnosed moderate to severe chronic lumbar spine muscle- ligament strain and zygapophyseal joint pain due to the March 2008 MVA. The report notes that the Appellant

has been off work since February 2014 because of worsening moderate to severe chronic musculoskeletal low back pain radiating down her legs.

SUBMISSIONS

[51] Mr. Napal submitted that the Appellant qualifies for a disability pension because:

- a) She attempted to continue working to the best of her ability, but due to her severe chronic back pain she was not able to continue working in a substantially gainful capacity;
- b) The Appellant should be commended for her efforts to continue working and the work that she did was for accommodating employers, with modified duties and hours;
- c) She did not earn a substantial amount of money, and her inability to continue working even under accommodated conditions substantiates her severe and prolonged disability;
- d) She has explored all recommended treatment modalities, but her condition has deteriorated;
- e) The medical evidence supports a severe and prolonged disability in accordance with the CPP criteria.

[52] The Respondent submitted that the Appellant does not qualify for a disability pension because:

- a) The Appellant continued substantially gainful employment after the December 31, 2008 MQP, and was working at the time of her CPP application;
- b) The Appellant's ROE reveals post-MQP earnings of \$10, 251 in 2010, and \$8, 335 in 2013. These amounts are comparable to the amounts the Appellant earned in previous years;
- c) The medical evidence does not support a severe disability as of the December 31, 2008 MQP, and the Appellant has demonstrated the capacity to work subsequent to the MQP.

ANALYSIS

[53] The Appellant must prove on a balance of probabilities that she had a severe and prolonged disability on or before December 31, 2008.

Severe

[54] The statutory requirements to support a disability claim are defined in subsection 42(2) of the CPP Act which essentially says that, to be disabled, one must have a disability that is "severe" and "prolonged". A disability is "severe" if a person is incapable regularly of pursuing any substantially gainful occupation. A person must not only be unable to do their usual job, but also unable to do any job they might reasonably be expected to do. A disability is "prolonged" if it is likely to be long continued and of indefinite duration or likely to result in death.

Guiding Principles

[55] The following cases provided guidance and assistance to the Tribunal in determining the issues on this appeal.

[56] The burden of proof lies upon the Appellant to establish on the balance of probabilities that on or before December 31, 2008 she was disabled within the definition. The severity requirement must be assessed in a "real world" context: *Villani v Canada (Attorney General*, 2001 FCA 248. The Tribunal must consider factors such as a person's age, education level, language proficiency, and past work and life experiences when determining the "employability" of the person with regards to his or her disability.

[57] The Appellant must not only show a serious health problem, but where there is evidence of work capacity, the Appellant must establish that she has made efforts at obtaining and maintaining employment that were unsuccessful by reason of her health: *Inclima v Canada (Attorney General)*, 2003 FCA 117.

[58] An Appellant is not expected to find a philanthropic, supportive, and flexible employer who is prepared to accommodate her disabilities; the phrase in the legislation "regularly of pursuing any substantially gainful occupation" is predicated upon the Appellant's capacity of being able to come to the place of employment whenever and as often as is necessary for her to

be at the place of employment; predictability is the essence of regularity: *MHRD v Bennett* (July 10, 1997) CP 4757 (PAB).

[59] It is a question of fact as to when a disability begins and when it becomes severe. In some cases the severity may occur in an instant. In other cases, it may take months or years for the disability to become severe as defined by the CPP. Further, a person may have a severe disability and not realize it because they are immobilized by other causes: *Forrester v MHRD* (November 3, 2003) CP 20789 (PAB).

[60] Remedial legislation like the Canada Pension Plan should be given a liberal construction consistent with its remedial objectives and each word in subparagraph 42(2)(a)(i) of the CPP must be given meaning and effect, and when read in that way, the subparagraph indicates that Parliament viewed as severe any disability which renders an applicant incapable of pursuing with consistent frequency any truly remunerative occupation: *Villani v Canada (Attorney General)*, 2001 FCA 248

[61] The mere fact that someone continues to work after the minimum qualifying period should not automatically preclude them from entitlement to a disability pension. Applicants with disabilities, who continue to work after the minimum qualifying period must be commended, not discouraged, for making an effort to remain financially self- supporting. In the end, what must be decided, when they do work, is whether they have, in fact, the capacity to regularly pursue substantially gainful employment: *Stanziano v MHRD* (November, 2002) CP 17296 (PAB).

[62] The amount of substantially gainful employment cannot be decided by a one-size- fits-all figure, particularly one that coincided with the current maximum retirement benefit. Comments describing substantial as “having substance, actually existing not illusory, of real importance or value, practical” and gainful as “lucrative, remunerative paid employment” are of some assistance in determining what amounts to a substantially gainful occupation, but this ultimately requires a judgmental assessment, which could involve considering local income levels and cost of living, as well as other factors specific to the circumstances of the Appellant: *MSD v Nicholson* (April 17, 2007), CP 24143 (PAB).

Application of Guiding Principles

[63] Both the Appellant and her daughter gave credible and straightforward evidence concerning the Appellant's longstanding disabling conditions resulting from her chronic severe low back pain and about how those conditions have affected the Appellant's life and capacity to work. They were accurate historians and did not attempt to exaggerate or overstate the Appellant's symptoms in anyway. Significantly, the oral evidence was consistent with and supported by the extensive medical evidence in the hearing file.

[64] The evidence clearly establishes that the Appellant has diligently explored treatment recommendations and medications, and that she has gone to extraordinary lengths to attempt to continue working. The Tribunal has no hesitation in determining that the Appellant is now severely disabled, and that she has been unable to pursue any type of employment since she last worked as school crossing guard in February 2014.

[65] There are, however, two difficult issues that the Tribunal must determine. Firstly, the Tribunal must determine whether the Appellant's disability had become severe as defined by the CPP as of the December 31, 2008 MQP date: see *Forrester*, supra, paragraph 60. Secondly, the Tribunal must determine whether the employment efforts by the Appellant evidence a post-MQP capacity to pursue substantially gainful employment: see principles set out in paragraphs 60 to 62, supra. For the reasons set out below, the Tribunal has determined these issues in favour of the Appellant.

[66] The medical and oral evidence establish that the Appellant's disability was severe as of December 31, 2008. In making this determination, the Tribunal attached considerable significance to the clinical notes of Dr. MacMillan in October and November 2008: see paragraphs 29 & 30, supra. These notes establish that, although the Appellant's condition deteriorated after the MQP, the Appellant's primary disabling conditions including severe chronic back pain radiating to her legs, headaches, and stress were extant as of the MQP. The noted dated February 12 2009 (which is only six weeks after the MQP) highlights the severity of the Appellant's conditions at that time: see paragraph 31.

[67] The Tribunal has also determined that the Appellant's employment efforts do not evidence a post-MQP capacity to pursue substantially gainful employment. Her employment was always for accommodating employers - with reduced duties, modified hours, and frequent rest breaks. As the *Bennett* case, *supra*, indicates, an Appellant is not expected to find a philanthropic, supportive, and flexible employer who is prepared to accommodate her disabilities. Further, the amounts earned by the Appellant were not substantial and she attempted to continue working despite increased pain, the need for significant medications, and deterioration in her condition. The Tribunal agrees with Mr. Napal that the inability of the Appellant to continue with any the various employment efforts she made is significant.

[68] In this case, the Tribunal considered the *Stanziano* decision, *supra*, which indicates that Appellants with disabilities who continue to work after the minimum qualifying period must be commended, not discouraged, for making an effort to remain financially self-supporting.

[69] After a careful review of oral and medical evidence, the Tribunal has determined that the Appellant has established, on the balance of probabilities, a severe and prolonged disability in accordance with the CPP.

Prolonged

[70] Having found that the Appellant's disability is severe, the Tribunal must also make a determination on the prolonged criteria.

[71] The Appellant's disabling conditions have continued for many years, and despite extensive treatment her condition has been deteriorating.

[72] The Appellant's disability is long continued and there is no reasonable prospect of improvement in the foreseeable future.

CONCLUSION

[73] The Tribunal finds that the Appellant has had a severe and prolonged disability since at least December 2008, by which time it was clear that she could no longer continue her self-employment as a residential cleaner. For payment purposes, a person cannot be deemed disabled

more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2) (b) CPP). The application was received in March 2011; therefore, the Appellant is deemed disabled in December 2009. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of April 2010.

[74] The appeal is allowed.

Raymond Raphael
Member, General Division